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No. 83-469 (3)

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

BILLY G. YOUNG

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 19, 1983
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*The opinion of the court of appeals is printed in the appendix to the petition for writ of certiorari and has not been reproduced.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA *v.* BILLY G. YOUNG

CRIM. No. 80-175

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
2.1.80	INDICTMENT
2.5.80	ENTER ARRAIGNMENT; local consl to ent app by 12-11-80; ents plea of NOT GUILTY as to ea of 15 cts;
3.9.81	ENTER JURY TRIAL: dft apps in per; ptys announce ready; jury duly empaneled & admonished; rule invoked on plf's mtn; plf & dft make opening stmt; plf presents case in chief w/test of wits; plf's exhs 1A & 1B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 6D, 6H adm; (6D-6H to be reoffered); ct adjourns to 3-10-81, 9 am (Eubanks)
3.12.81	ENTER FURTHER JURY TRIAL: dft apps in per; bailiff sworn; ct instructs jury; jury retires to del at 10:23 am; rets w/verdict of GUILTY on Cts 1-9, 13-15 & NOT GUILTY on ct 12 at 2:45 pm; is polled; is dischgd; bailiff to take jury to lunch at govt expense; dft to stand on present bond to wait sentencing (Eubanks)
3.12.81	VERDICT OF GUILTY on Cts 1 through 9, NOT GUILTY on ct 12 & GUILTY on cts 13 through 15
5.7.81	ENTER SENTENCING: sent to cust of AG for 2 yrs on ea of cts 1-9 & 13—15, ea ct to run concurrent; $1,000 fine on ea of cts 1-9, $10,000 fine on ea of cts 13, 14 & 15 (total fine of $39,000) purs to R.38(a)(3); fine to be paid as a condition precedent to an appeal; dft advised of right to appeal; bond fixed in amt of $5,000 C/S; stand on present bond; cts 10 & 11 to be dismd (Eubanks)

5.7.81	NOTICE OF APPEAL fm Judgm & Sent ent'd 5-7-81

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA *v.* BILLY G. YOUNG

No. 81-1536

DATE	PROCEEDINGS
5.15.81	Case docketed
12.23.81	Appellee's brief filed
2.22.83	Judgment is reversed. The cause is remanded to district court.
4.8.83	Appellee's petition for rehearing en banc filed
6.20.83	Denied appellee's petition for rehearing en banc—en banc panel
7.29.83	Appellee's motion to recall and stay mandate, pending cert., filed
8.23.83	Appellee's motion for continued stay of mandate filed and granted. Parties notified

[541] [CLOSING ARGUMENT ON BEHALF OF RESPONDENT]

THE COURT: All right. You may close the argument for the defendant, Mr. Bailey.

MR. BAILEY: Thank you, your Honor.

May it please the Court, ladies and gentlemen. [542] I thank you for your kind attention.

Billy's life is on trial. And he's led a blameless life. He's a fine citizen.

At the outset I told you that we would try to be fair with you, we wouldn't overstate it. We tried to develop the proof and the truth. And I think we've kept that commitment. Just put it up to you exactly the way it was. And I don't deal in personalities, it's not something a lawyer should do and a lawyer can't get mad, he loses respect. But I'm obligated as a lawyer to attack unfairness. And I submit to you that this case has been presented unfairly by the prosecution. From the very beginning in opening statements for statements were made like 90 percent is fuel oil, under cover of darkness, broken seals. Till this very moment the statements have been made to poison your minds unfairly. The government has an obligation to shoot straight with you and with people accused of a crime. The Constitution of this country and the United States Supreme Court requires that they develop exculpatory evidence, evidence that tends to show the innocence of those on trial. I'll leave it to you to determine whether this prosecution has done that. Any time it's been possible to leave an inuendo of wrong-doing when it was only a half truth or none at all that has been left with you. That exhibit is a fair example. The government would have you believe that that was the sales of Compton to Apco. And it's [543] not. The overwhelming bulk of the crude oil, of the product sold to Apco was crude oil. The regulations provide that it's 50 percent or more that's the component that you certify it. The attempt to make the case something that it isn't does no credit to the prosecution. It's a sad case but it is true that the behavior of the FBI is not commendable in this case. Gaining access by deceit. The power of the government is

so enormous brought to bear on an individual. Unless you have been in that position you can't comprehend the dimensions of it, of these people sitting out here.

The FBI agent and the enormous resources that they have bring to bear someone who has one person to represent them. And it's been brought to bear unfairly. And I think you will know that. Any time it was possible to leave the impression that there was a big profit being made it was left when they know that's not true. Any time it was possible to leave the impression that it was only fuel oil that went to Apco it was left when you know that's not so. Any time it was possible to leave any impression that would cast a bad light on Billy Young even though they knew it wasn't so that's what was done. And I submit to you it's reprehensible.

The indictment says that Billy Young is charged with intending to devise a scheme to defraud Apco and to obtain money and property by false and fraudulent pretenses. And I submit to you that there's not a person in this courtroom [544] including those sitting at this table who think that Billy Young intended to defraud Apco. Now, if you think that Billy Young intended to defraud Apco, if that was his scheme and intent, Billy Young is dead. But that's an element of this charge that the government is obligated to prove beyond a reasonable doubt. I submit to you folks as reasonable people that you have to hold reasonable doubt. Apco I submit to you wasn't defrauded. You recall that the blending of the high quality condensate which Mr. Young managed to buy and lost money on and there's no proof to the contrary here and I'm just going to be as frank as I tried to be all through this thing and the other crude oil that went into it was delivered to Apco from January '77 through to September and according to the chemist they tested and I forget how many times but they frequently tested it, there was never any complaint about it. Mr. Bradley said there was never any complaint about it until July or August, sometime in that time range of '77 when another purveyor, large supplier of that Cyril facility brought in pure burner fuel and the residual product of the refinery to increase. But in all the previous times Apco was

either entirely happy with what they were receiving. It didn't show up on the stock reports, they were getting the same gasoline and so forth they'd always gotten because of this blend and it just makes sense seems to me. In other words, there was no complaint about it. There is—I find no basis to suggest [545] to you that Apco was injured by anything that was sold to them by Compton. There's not a word of proof in this record that there was any loss to Apco on any entitlements program. That's simply—it's very complicated but simply a judgment procedure between refineries. And they—there was someone I think it was Mr. Hardy suggested, well, someone might come back on Apco yet. That happened four years ago. He knows that's not so. Apco didn't lose anything by it.

There is kind of a anomalous situation in the proof. There is no question, as I understand it, that if you take the low gravity crude that has about—I forget the numbers, real low, sometimes, I think, 18 degrees gravity, maybe even lower than that, you folks remember better than I do—and you blend it with the condensate or higher gravity crude, no one contends there's anything wrong with that. The government doesn't contend that as I understand it. It goes on all the time. That's the proof here. Now, the chemist didn't know that. I thought that was kind of interesting. But, there's no question apparently that goes on routinely all the time. Sometimes you have to do it to move the crude because it's set up so hard like tar it has to be blended down or heated so that it can be pipelined. There's nothing wrong with that. But if you take number four oil they're contending that's a higher gravity and higher quality and blending it with high quality crude and with condensate suddenly it becomes a crime.

[546] I submit to you as a matter, folks, in common sense and good judgment that that's inherently intolerable, illogical and should never be the basis for criminal prosecution.

Now, Billy is guilty of being a good friend of Ken Ross. There's no question, I submit to you, I think you all know this, that his motives were of the highest order. I think if you ever serve on a jury again this case will stick in your

mind. I never recall a case in 20 years of them where virtually every government witness that was called that knew Billy testified to his honorableness, his integrity, his rectitude and I say that makes the case unique. And it goes to undercut any contention that that man had any intention to defraud anybody.

You know, it's a heavy responsibility that a lawyer has in representing someone in a serious matter like this when a life is involved. And I wished I could do it better.

Billy never certified anything, neither did Compton. Look at what was certified to them. These counts of the indictment about false certification aren't true. There's not a syllable of proof in this that supports that. There's some attempt at some convaluted conspiracy but the government hasn't brought any of these people to testify to it. They tried to get it in through innuendos or hearsay but you don't hear it from Davis, Truitt Davis or Al Daigle or Rytenberry or any of these people, that's kind of left in limbo, and intention [547] for you to draw some kind of sinister concept from it which isn't there and doesn't exist. It would be interesting where they fit in the thing. There's certainly no evidence that implicates Billy Young in any scheme to get money. And any innuendos of that type are so unfair and so offensive. I submit to you you should not tolerate it.

These complex economic regulations should not have any place in an effort to put someone away. Billy didn't—they fish around for someone to make a deal like they got Mr. Ross and Billy to save his own neck by throwing someone else to the wolves. He's the only one in this whole affair that has acted with honor and with integrity. Pride as I told you in opening statement and Lancer's and these folks in Tulsa, they make the money and they make the deals with the government and Billy sits here. That's improper. That's unfair. And he had no intent to defraud anybody.

Well, I believe in the jury system and I don't just tell you that. You bring the combined life experience, common sense to some, what, 300 years or something to this case. When you go in that jury room you are not required to leave your common sense outside. You take that in with

you. And when you do I'm confident that you will do the right thing and return a verdict of not guilty because he is not.

Now, when I sat down it is the law and this jurisdiction as Judge Eubanks explained to you that Mr. Hardy will [548] get up and talk to you again. And it's a good law. They have the burden of proof beyond a reasonable doubt and they get two bites at the apple. But nothing he says, whatever it is, can be addressed by me to rebutt. Now, I request that you give him your careful attention as you have me and that you hold in mind when you come back in the morning and receive the Judge's instructions these matters that I have talked to you about and return a judgment of not guilty.

Thank you.

THE COURT: Thank you, Mr. Bailey.

[GOVERNMENT'S REBUTTAL ARGUMENT]

Yes, go ahead, Mr. Hardy, and close the argument for the prosecution.

MR. HARDY: Yes, sir.

Ladies and gentlemen, we are now required or obligated to address you with respect to points that Mr. Bailey made during his argument and offer you an alternative view to certain things that he said to you and to us.

He said we were unfair. Said we didn't tell you about the—that Compton was selling crude oil to other locations. My recollection is that I told you that and in fact it came out during trial that Mr. Young was trying to raise the gravity level of the fuel oil that it was selling up at Cyril so it would be like the other crude oil that they were selling. And we concede and admit and know and say they were selling to the other locations, that is Tex-Mex and Mabee and [549] Blanken, places like that. I don't recall not telling you that, in fact, it was a theory of the government's case as I recollect that the alteration in the gravity level with the condensate was to make this fuel oil look like crude oil.

I think he said that not anyone sitting at this table thinks that Mr. Young intended to defraud Apco. Well, I was sitting there and I think he was. I think he got 85 cents a barrel for every one of those 117,250.91 barrels he hauled and every bit of the money they made on that he got one percent of. So, I think he did. If we are allowed to give our personal impressions since it was asked of me.

And then he says Apco wasn't defrauded. Well, a friend for 20 years, Hugh Bradley signed a contract with him, said I'll sell you personally, not just Compton, Bill G. Young right on there, I'll sell you Oklahoma Sweet crude. That's what he said he would sell them right there at Cyril. He told them he would do that and he thought it was such a good deal he wrote a letter back in April a couple of months later and he said, Dear Mr. Bradley, I want to amend this to make it go on every month.

And then the fellow Don Heavin that came in here this morning, I don't know what you thought of him, seemed like a very nice decent sort of guy, Mr. Young even told us he thought he was a nice guy, when Don Heavin, Hugh Bradley, they called him up, Mr. Young, and said, Bill, are you selling us [550] fuel oil instead of Oklahoma Sweet crude oil? He said no.

I don't know what you call that, I call it fraud.

You can look at the evidence and you can remember the testimony, you remember what they said and what he admitted they said. I think it's a fraud.

Mr. Bailey told us up until September Apco was entirely happy. Well, they were happy because they didn't know. That's the whole point of the prosecution, it was a fraud. They didn't know until they did the distillate and they told you that they didn't do the distillate on the samples catchers until the fuel oil racks started filling up with residual. You remember old Acel Ackley came in this morning and drew us the charts and showed us they like to get about 25, 30 percent residium and they were getting 50 percent and they were getting this huge production and they checked their pipe line supplier, checked their distillation process trying to figure out why this was happening then they finally took a sample catcher or they caught a truck from Pioneer Oil and found out they were bringing in straight fuel oil. And then they did a sample catcher test and they found out they were getting fuel oil, they weren't getting

crude oil. Well, Apco wasn't so happy then because the FBI got involved in the case. They weren't happy at all when they found out and that is the point of a fraud when they don't know they're happy.

He said—Mr. Bailey said Apco didn't lose, says [551] doesn't think anyone will come back. Well, what he thinks they won't come back but my experience in these matters is when the government does something like this they're going to come back. All that money that Apco got for this stripper and new oil, Al Green at the Apco trust he's going to get some kind of invoices. That's what I think.

Mr. Bill—Mr. Young, he didn't certify anything. Who certified it? People that he worked—that worked for him and you heard them testify. They were friends of Mr. Young. And what does that evidence show? That he got them involved in this. They could have all been charged but they weren't. He was charged because he was the one that asked them to do it. He was the one that said set up the tanks in Chickasha, he was that the one that got them to set up the tanks down in Abilene yard. He was the one that would have them send the invoices up to Apco. He was the one that did it not Judy Boeshart or Johnnie Huff or Lennox Bird or Grady Haynes or Ken Fuller, they're all nice fellows and women too, they came in and testified, they all got themselves in the middle of this case. I suppose some prosecution should say bring them all in. The grand jury decided to indict only the one that appears, that's alleged that was involved that perpetrated it, the manager, the executive vice president, the top man at Compton is Mr. Young. He was the one everyone said, every single one of those people he got involved in this say, they [552] did it because he told them to do it.

Well, Mr. Bailey said that Mr. Young acted with honor and integrity in this case, he was the only one that did it. Well, he got all of his friends at Compton involved in this thing and he told his friends at Apco, Hugh Bradley, Don Heavin, said, no, I'm not selling you fuel oil. I don't know whether you call it honor and integrity, I don't call it that, Mr. Bailey does. If you feel you should acquit him for that it's your pleasure. I don't think you're doing your job as ju-

rors in finding facts as opposed to the law that this Judge is going to instruct you, you think that's honor and integrity then stand up here in Oklahoma courtroom and say that's honor and integrity; I don't believe it.

As I say, ladies and gentlemen, we are required only to mention alternative ways of looking at points that Mr. Bailey made in his closing argument and that's what I've tried to do.

I ask you to go back in the jury room and I endorse Mr. Bailey's suggestion that you use your common sense in the case and if you do I think you are required to come back and find out, yes, it's in truth and fact without fear and favor of bias and prejudice and sympathy, this happened, it's a crime, Mr. Young did it.

Thank you.

THE COURT: Thank you.

Supreme Court of the United States

No. 83-469

UNITED STATES, PETITIONER

v.

BILLY G. YOUNG

ORDER ALLOWING CERTIORARI. Filed February 21, 1984.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.